

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CMA CGM S.A. and CMA CGM
(AMERICA) LLC,

Plaintiffs,

-against-

CHINA CONTAINER LINE LTD. and
MTA EXPRESS INC.,

Defendants.

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U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 15 2296

COMPLAINT

KUNTZ, J.

SCANLON, M.J.

PLEASE TAKE NOTICE that Plaintiffs, CMA CGM S.A. (“CMA”) and CMA CGM (AMERICA) LLC (“CMA AMERICA”), by their attorneys, Mahoney & Keane, LLP, as and for a Complaint against Defendants, MTA EXPRESS INC. (“MTA”) and CHINA CONTAINER LINE LTD (“CCL”), allege, upon information and belief, as follows:

1. This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is based upon 28 U.S.C. § 1333, as well as the Court's diversity, pendent, supplementary, and ancillary jurisdiction.
2. Plaintiff CMA is a legal entity duly organized and existing pursuant to the laws of a foreign country, with offices and a place of business located at 4 Quai d'Arenc, 13002 Marseille, France.
3. Plaintiff CMA AMERICA is a legal entity duly organized and existing pursuant to the laws of one of the states of the United States, with offices and a place of business located at 5701 Lake Wright Drive, Norfolk, VA 23502.

4. Defendant CCL is a business entity organized and existing pursuant to a foreign country or one of the states of the United States with offices and a place of business located at 10350 Heritage Park Drive, Suite 200, Santa Fe Springs, California 90670.

5. Defendant MTA is a business entity organized and existing pursuant to the laws of one of the states of the United States with offices and a place of business located at 1248 Tabor Court, Brooklyn, New York 11219.

6. The United States District Court for the Eastern District of New York is the proper venue for this action, as Defendant MTA resides or maintains a principal place of business in this district, the parties' subject contracts expressly permit commencement of suit in this district, and a substantial portion of the events giving rise to the dispute occurred in this district.

7. Plaintiffs sue on their own behalf and as agents and trustees on behalf of any other party who may now have or hereinafter acquire an interest in this action.

AS AND FOR A FIRST CAUSE OF ACTION

8. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "7" as if specifically set forth herein at length.

9. On or about December of 2013 through May of 2014 and at all times relevant herein, Plaintiff CMA as "Carrier," and Defendant CCL, as "Shipper", "Consignee", and "Merchant," through their responsible representatives entered into and were parties to a Service Contract numbered 13-0291 and Bills of Lading numbered NBXW316613, QDJM025891, QDJM025979, QDJM026091, QDJM026090, QDJM026092, QDJM026110, QDJM026111, and QDWEC044346 for the ocean carriage from Chinese Ports to the Port of New York of thirty-one 40' containers said to contain cargoes of radial tires, all in consideration of payments by CCL to Plaintiffs for said services.

10. On or about January through August of 2014 and at all times relevant herein Plaintiff, CMA, as "Provider" and Defendant MTA, as "Motor Carrier" entered into and were parties to a Uniform Intermodal Interchange and Facilities Access Agreement, whereby Defendant MTA was authorized by Plaintiffs to, and did in fact, take delivery and/or receipt of physical possession of the aforesaid cargoes and CMA equipment at the discharge port on behalf of Defendant CCL.

11. Plaintiffs duly performed all duties and obligations required to be performed by Plaintiffs in connection with the goods.

12. Defendants wrongfully, willfully, negligently and/or fraudulently breached the terms of the subject service contract, waybills, bills of lading, tariffs, intermodal interchange agreements and/or other related agreements by, inter alia, failing to pay per diem charges for freight, detention, demurrage, and/or other associated costs accrued on the cargoes, all as duly invoiced by Plaintiffs to Defendants.

13. As a result of Defendants' breach of the agreements, Plaintiffs have incurred, and will continue to incur, costs and expenses for which Defendants are liable under the terms of the governing contracts and at law.

14. Plaintiffs have placed Defendants on notice of their claim that Defendants have breached the subject agreements and violated Plaintiffs' rights under the law.

15. Despite Plaintiffs' repeated demands, Defendants have failed to pay the Plaintiffs' damages due and owing under the agreements and at law.

16. By reason of the foregoing, Plaintiffs have sustained damages in the amount of \$166,005.00, together with interest, costs, fees, including reasonable attorneys' fees, and expenses.

AS AND FOR A SECOND CAUSE OF ACTION

17. Plaintiffs repeat and reiterate each and every allegation contained in paragraphs "1" through "16" as if specifically set forth herein at length.

18. Defendants have an account stated with the Plaintiffs.

19. By reason of the foregoing, Plaintiffs have sustained damages in the amount of \$166,005.00, together with interest, costs, fees, including reasonable attorneys' fees, and expenses.

AS AND FOR A THIRD CAUSE OF ACTION

20. Plaintiffs repeat and reiterates each and every allegation contained in paragraphs "1" through "19" as if specifically set forth herein at length.

21. Plaintiffs are due from Defendants the quantum meruit of Plaintiffs' services.

WHEREFORE, Plaintiffs pray that judgment be entered in favor of Plaintiffs for an amount exceeding \$166,005.00, together with interest, costs, fees, including reasonable attorneys' fees, and disbursements; that Court process be issued against the Defendants; and that Plaintiffs be granted such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 21, 2015

MAHONEY & KEANE, LLP
Attorneys for Plaintiffs

By:



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